

Beverly Hills Denim Company, Inc. and Edith Noemi Telule. Case 21-CA-29300

November 26, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Edith Noemi Telule, an individual, the General Counsel of the National Labor Relations Board issued a complaint on August 31, 1993, against Beverly Hills Denim Company, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. An erratum to the complaint was served on the Respondent on October 8, 1993. Although properly served copies of the charge and complaint and erratum, the Respondent failed to file an answer.

On November 5, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On November 10, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated September 27 and October 8, 1993, notified the Respondent that unless an answer was received by October 5 and 13, 1993, respectively, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, with a facility located at 4293 Bandini Boulevard, Vernon, California, has been engaged in the wholesaling of clothing products. During the 12 months preceding issuance of the complaint, the Respondent sold and shipped goods valued in excess of \$50,000 directly to points outside the State of California. We find that the

Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About March 9, 1993, employees Eva Orta, Maria Tapia, and Edith Noemi Telule concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by speaking out against the Respondent's new piece rate minimum requirements. About March 15, 1993, the Respondent's employees, Eva Orta and Edith Noemi Telule, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by speaking out against the Respondent's new piece rate minimum requirements and mistreatment of employees by the Respondent. About March 17, 1993, the Respondent discriminatorily laid off employees Edith Noemi Telule, Eva Orta, and Maria Tapia. The Respondent laid off these employees because they engaged in protected concerted activity and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has violated Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has discriminatorily laid off Edith Noemi Telule, Eva Orta, and Maria Tapia, we shall order the Respondent to offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful layoffs, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Beverly Hills Denim Company, Inc., Vernon, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off or otherwise discriminating against its employees because they engaged in protected concerted activities and to discourage employees from engaging in these or other concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer the employees listed below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this Decision and Order:

Edith Noemi Telule

Eva Orta

Maria Tapia

(b) Expunge from its files any and all references to the unlawful discharge of the above employees, and notify the employees, in writing, that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Vernon, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 26, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT lay off or discriminate against our employees because they act together for their mutual aid or protection by speaking out against our new piece rate minimum requirements and mistreatment of employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Edith Noemi Telule, Eva Orta, and Maria Tapia immediate and full reinstatement to their former jobs and make them whole, with interest, for any loss of earnings or other benefits they suffered as a result of our discrimination against them.

WE WILL notify each of the above employees, in writing, that we have removed from our files any and all references to their discharge and that we will not use the discharges against them in any way.

BEVERLY HILLS DENIM COMPANY, INC.